

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Rules and) CS Docket No. 97-98
Policies Governing Pole)
Attachments)

REPLY COMMENTS
of the
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996 ("Act").¹ Approximately half of NTCA's members are organized as cooperatives.

The Commission proposes to adjust the pole attachment formula pursuant to its authority under Section 224 of the Communications Act.² Generally, Section 224 grants the Commission authority to regulate the rates, terms and conditions governing pole attachments and requires that such rates, terms and conditions are just and reasonable.³ The Commission's regulatory authority over pole attachments, however, is not triggered unless a state does not exercise its jurisdiction

¹ 47 U.S.C. §§ 151 *et. seq.*

² *Id.* at § 224.

³ *Id.* at § 224(b)(1)

No. of Copies rec'd
List ABCDE

045

over pole attachments or, in individual matters, if a state fails to take final action on a complaint within an allotted period of time.⁴

NTCA submits these reply comments primarily in response to comments made by the Small Cable Business Association ("SCBA") regarding the Initial Regulatory Flexibility Analysis ("IRFA") conducted by the Commission in the above proceeding. NTCA also supports those commenters urging the Commission to retain a passive role in regulating the rates, terms and conditions of pole attachments.

The Commission properly acknowledges that cooperatively organized telephone companies are statutorily exempted from the requirements of Section 224.⁵ The SCBA takes exception to this Congressionally authored exemption by labeling it as a "market entry barrier," in violation of Section 257 of the act, in comments filed in response to the Commission's IRFA.⁶ The SCBA's argument that the Section 224(a) cooperative exemption creates a barrier to small cable's entry into the provision of telecommunications services is wholly unsubstantiated. The SCBA cites no specific complaints filed against cooperatively organized local exchange carriers regarding pole attachment issues. Its mere assertions and labeling tactic deserve no consideration. Regardless, the Congress has chosen to exempt cooperatives from the requirements of Section 224. Furthermore, the exemption in 224 does not deprive SCBA

⁴ *Id.* at 224(c)(3)(A-B)

⁵ *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Notice of Proposed Rulemaking (released March 14, 1997) at ¶ 5. See also, 47 U.S.C. § 224(a)(1) (for purposes of this section, "the term 'utility' . . . does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.").

⁶ Small Cable Business Association Comments at 2 ("Inability to access poles on economically feasible terms represents a significant barrier to entry.").

members of available legal remedies in connection with pole attachment agreements negotiated with exempt electric or telephone cooperatives.

In terms of the substantive proposals contained in the March 14, NPRM, NTCA supports those commenters that urge the Commission to adopt pole attachment policies based on the premise that voluntarily negotiated rates should be the fundamental means of setting rates for pole access.⁷ NTCA also recommends a limited role for the Commission and agrees with Southern New England Telephone Company that “rather than relying on a formulaic and prescriptive approach, competition is best encouraged by turning first to a market-based process.”⁸

NTCA disagrees with the comments of Tele-Communications, Inc., suggesting that the Commission should not defer pole attachment rate issues to private negotiation. The Commission should adopt a policy that permits negotiations as a first option in all cases where the state does not exercise jurisdiction under Section 224(c). Formulas and prescriptive rules should apply only in cases where the parties subject to 224 cannot negotiate pole attachment rates.

⁷ Whitepaper at 3-5 (See BellSouth Comments at 3).


⁸ Southern New England Telephone Company Comments at 2.

CONCLUSION

NTCA urges the Commission to disregard the comments of the SCBA. Additionally, NTCA advocates a limited role for the Commission in pole attachment regulation and recommends deference to a market-based regulatory model.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

By 
David Cosson

By 
L. Marie Guillory

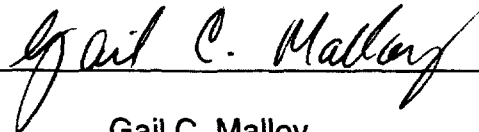
Its Attorneys

2626 Pennsylvania Ave., N.W.
Washington, D.C. 30037
(202) 298-2300

August 6, 1997

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telephone Cooperative Association in CS Docket No. 97-98 was served on this 6th day of August 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


Gail C. Malloy

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802-0106
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844-0105
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

Mr. Michael T. McMenamin
Cable Service Bureau
Federal Communications Commission
2033 M Street, N.W. Room 801(B)
Washington, D.C. 20554

Lori L. Ortenstone, Esq.
Southwestern Bell Telephone Co.
525 B Street, Room 900
San Diego, California 92101

Sarah D. Smith, Esq.
Electric Services Public Service
Company of New Mexico
Alvarado Square, Mailstop 0806
Albuquerque, NM 87158

William J. Niehoff, Esq.
Union Electric Company
1901 Chouteau Ave
P.O. Box 66149 (M/C 1310)
ST. Louis, Missouri 63166-6149

Emily M. Williams, Esq.
Richard J. Metzger, Esq.
Association for Local
Telecommunications Service
1200 19th Street, N.W. Suite 607
Washington, D.C. 20036

James D. Ellis, Esq.
Robert M. Lynch, Esq.
David F. Brown, Esq.
SBC Communications Inc.
175 E. Houston, Room 1254
San Antonio, TX 78205

Catherine R. Sloan, Esq.
Richard L. Fruchterman, Esq.
Richard S. Whitt, Esq.
Worldcom, Inc.
1120 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036

Ward W. Wueste, Esq.
Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Margaret E. Garber, Esq.
Pacific Telesis Group
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Mary McDermott, VP & Esq.
Linda Kent, Esq.
Keith Townsend, Esq.
Hance Haney, Esq.
USTA
1401 H St. N.W. Suite 600
Washington, D.C. 20005-2136

Edward D. Young, III, Esq.
Betsy L. Anderson, Esq.
Bell Atlantic Tel. Companies
1320 North Court House Road
Eighth Floor
Washington, D.C. 22201

Gerald A. Friederichs, Esq.
Ameritech Operating Companies
30 S. Wacker Drive, 39th Floor
Chicago, IL 60606

Shirley S. Fujimoto, Esq.
Christine M. Gill, Esq.
Thomas J. Navin, Esq.
Catherine M. Krupka, Esq.
McDermott, Will & Emery
1850 K St., N.W., Suite 500
Washington, D.C. 20006

Walter Steimel, Jr., Esq.
Richard E. Jones, Esq.
Marjorie K. Conner, Esq.
Hunton & Williams
1900 K St. N.W., Suite 1200
Washington, D.C. 20006

David L. Lawson, Esq.
Scott M. Bohannon, Esq.
AT&T Corp.
1722 Eye Street, N.W.
Washington, D.C. 20006

Paul Glist, Esq.
John Davidson Thomas, Esq.
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006

David N. Porter
Anne F. La Lena
Worldcom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Gardner F. Gillelspe, Esq.
Cindy D. Jackson, Esq.
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004

Joseph P. Cowin
Sprint Corporation.
P.O. Box 11315
Kansas City, MO 64112

Rick Giannantonio, Esq.
Ohio Edison Company
76 South Main Street
Akron, OH 44308

Mark C. Roseblum, Esq.
Roy E. Hoffinger, Esq.
Connie Forbes, Esq.
AT&T Corp.
295 North Maple Avenue
Basking ridge, NJ 07920

Robert P. Slevin, Esq.
NYNEX Telephone Companies
1095 Avenue of the Americas
Room 3731
New York, NY 10036

Durward D. Dupre, Esq.
Mary W. Marks, Esq.
Jonathan W. Royston, Esq.
SBC Communications Inc.
One Bell Center, Room 3520
St. Louis, Missouri 63101

R. Michael Senkowski, Esq.
Robert J. Butler, Esq.
Bryan N. Tramont
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Joseph M. Sandri, Jr.
AVP and Regulatory Counsel
Winstar Communications, Inc.
1146 19th Street, N.W., Suite 200
Washington, D.C. 20036

Jay C. Keithley, Esq.
Sprint Corporation
1850 M Street N.W., Suite 1100
Washington, D.C. 20036

Lawrence Fenster, Esq.
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

J. D. Thomas, Esq.
Cole, Raywid & Braverman, L.L.P.
1919 Penn. Ave., N.W., Suite 200
Washington, D.C. 20006